

REMARKS

Applicant believes that the foregoing amendments and the following comments will convince the Examiner that the rejections and objections provided in the March 25, 2004
5 Office Action have been overcome and should be withdrawn.

I. THE INVENTION

This invention relates to the field of ear protection systems, and in particular, means for stowage of protective
10 ear devices. Further, the invention relates to an encasement for ear protection devices with means for extension and retraction of protective ear devices that affords the user adjustability and versatility in placement of the encasement. The invention is designed to be
15 adaptable to any type of environment or situation a user may encounter where it is desirable to block out a harmful or disturbing noise.

II. THE EXAMINER'S OBJECTIONS

20 The Examiner objected to the drawings under 37 CFR 1.83(a) as not showing every feature of the invention specified in the claims. Specifically, the ear protection system connected to a user's shirt collar, to a user's cell

phone, to a user's bathing cap, to a user's eye gear and to a user's jacket were not shown in the drawings.

The specification was objected to under 37 CFR 1.75(d)(1) for failing to provide proper antecedent basis
5 for the claimed subject matter. Specifically, the Examiner objected to the specification for failing to describe the subject matter of claims 40-42.

Claims 29-35 were objected to for depending upon claim 28, which had been cancelled in response to the Office
10 Action dated June 3, 2003.

III. THE EXAMINER'S REJECTIONS

A. 35 U.S.C. § 112

The Examiner rejected claims 40-42 under 35 U.S.C. §
15 112, first paragraph, as failing to comply with the written description requirement. Particularly, the Examiner contended that the claims contain subject matter that was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that
20 the inventor, at the time the application was filed, had possession of the claimed invention. (Paragraph 4).

B. 35 U.S.C. § 103

1. Claims 1-5, 7-9, 11-13, 15-20, 22-25, 27, 29-32, 34, 35, 37, and 40

5 The Examiner rejected claims 1-5, 7-9, 11-13, 15-20, 22-25, 27, 29-32, 34, 35, 37, and 40 under 35 U.S.C. § 103(a) as being unpatentable over Urawa (JP 08237349) in view of Nakano U.S. Patent No. 5,581,821 (hereinafter referred to as "Nakano"). The Examiner opined that Urawa
10 discloses the claimed invention except for a retractable ear protection system comprising a plurality of earplugs. The Examiner argued that it would be obvious "to employ the Nakano earplugs with the Urawa independently operable retractions means because the teachings combination would
15 result in a system of independently retractable earplugs, in which, each of the ear plugs could be controlled to extend to a desire [sic] length depending on the need, and wherein only one of the earplugs could be used if that is the need." (Paragraph 5).

20 2. Claim 6, 10, 21, 33, and 36

 The Examiner rejected claims 6, 10, 21, 33, and 36 under 35 U.S.C. § 103(a) as being unpatentable over Urawa in view of Nakano, in further view of Rozon U.S. Patent No. 5,279,473 (hereinafter referred to as "Rozon"). The
25 Examiner stated that Urawa and Nakano disclose the claimed

invention except for an encasement structure constructed of plastic and a spring loaded locking mechanism comprised as a thumb slide. The Examiner argued that it would have been obvious to employ the "Rozon configuration with the Urawa and Nakano design because the thumb slide is easy to use and provide [sic] a good ergonomically fit actuator for a user to use, and the plastic encasement structure would provide an economical and light-weight structure that would be easy to carry by and [sic] user and low cost to produce." (Paragraph 6).

3. Claims 14 and 38

The Examiner rejected claims 14 and 38 under 35 U.S.C. § 103(a) as being unpatentable over Urawa in view of Nakano, in further view of Burger et al. U.S. Patent No. 4,802,638 (hereinafter referred to as "Burger"). The Examiner argued that Nakano discloses the claimed invention with the exception of "wherein the clip-on means is rotatable." According to the Examiner, it would have been obvious "to employ the Burger et al. rotatable clip-on with the Urawa and Nakano design because it would provide a certain degree of movement that would prevent the cord from getting tangle [sic] with the surface of the encasement structure." (Paragraph 7).

4. Claims 39 and 41-43

Claims 39 and 41-43 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Urawa, in view of Nakano, in further view of Yang U.S. Patent No. 5,984,224. The Examiner contended that Urawa and Nakano disclose the claimed invention with the exception "wherein the mounting means could be attached to a user's shirt collar or a bathing cap or an eye gear or a jacket." The Examiner stated that it would have been obvious "to employ the Yang configuration with the Urawa and Nakano design because it would provide the versatility of being attached to any item worn by a user increasing the practical application of the ear protection system" (paragraph 8).

15 **IV. THE EXAMINER'S OBJECTIONS AND REJECTIONS SHOULD BE WITHDRAWN**

A. OBJECTIONS

The Examiner objected to the drawings under 37 CFR 1.83(a) as not showing every feature of the invention specified in the claims. Specifically, the ear protection system connected to a user's shirt collar, to a user's cell phone, to a user's bathing cap, to a user's eye gear and to a user's jacket were not shown in the drawings. Claims 39-

42, directed to the missing drawing elements, have been cancelled.

The specification was objected to under 37 CFR 1.75(d)(1) for failing to provide proper antecedent basis for the claimed subject matter. Specifically, the Examiner objected to the specification for failing to describe the subject matter of claims 40-42. As stated above, claims 40-42 have been cancelled.

Claims 29-35 were objected to for depending upon claim 28, which had been cancelled. Applicant has amended claims 29-30 to depend upon claim 24 and provide proper claim dependency.

B. REJECTIONS

1. 35 U.S.C. § 112

The Examiner rejected claims 40-42 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Particularly, the Examiner contended that the claims contain subject matter that was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. As stated above, claims 40-42 have been cancelled.

2. 35 U.S.C. § 103

The Examiner rejected claims 1-5, 7-9, 11-13, 15-20, 22-25, 27, 29-32, 34, 35, 37, and 40 under 35 U.S.C. §103(a) as being unpatentable over Urawa in view of Nakano.

5 Urawa is directed toward an earphone and connector device, in which the earphone wire is maintained on a spool. The spool allows the wire to be selectively retracted. The Examiner states that Urawa teaches a "...plurality of retraction means operates the earphone and connector
10 devices independently (Fig.3; Abstract)." (Paragraph 5).

The Examiner's attention should be drawn to element 3 of Figure 3 of Urawa, which designates the cord connecting the earphone 31 and the plug 32. As the earphone 31 and plug 32 are connected by the same cord 3, they cannot be
15 operated and retracted independently as the two pieces are connected to one another. In fact, the operation of the two elements is dependent upon one another. Should a user decide to extend the earphone 31 until no more cord was left on reel 25, the length of the cord a user could extend
20 for the plug 32 would be limited. Therefore, as the use of earphone 31 affects the use of plug 32, the operation and retraction of these two elements in Urawa cannot be independent as required by the language of claims 1 and 24.

Applicant has amended claims 1 and 24 to more particularly highlight the distinction discussed above. Specifically, Applicant has added language identifying the independence of the ear protection devices from one another. As the earphone 31 and plug 32 of Urawa cannot be independent of another due to the necessity of an electrical connection between the two elements, Urawa cannot anticipate the instant invention nor can Urawa render the instant invention obvious in combination with any of the references currently cited.

With respect to Nakano, we believe our description and arguments still apply. Nakano is directed to an ear protection device for attachment to a construction helmet. The invention specifically relates to the field of construction, in which the ear protectors are designed to be readily accessible for use by a workman. Applicant respectfully submits that the teaching of Nakano is limited to the use of an ear protection assembly in combination with headgear having a crown and a forwardly extending peak. Nakano specifically discloses:

"[A] reelable ear plug assembly detachably carried on a helmet 11, such as is used by a construction worker. The helmet may be referred to as a construction helmet and the assembly is carried on a housing 12 which may be attached to the rear of the helmet, as shown, such as with adhesive or by a releasable clamp, or, if

desired, the housing may be detachably connected to a brim or visor 13 formed with the crown of the helmet 11."

5 The specific design of the ear protection assembly device disclosed by Nakano limits the invention to specific placement on the brim or crown of a construction helmet. The device consists of only one retraction means which inhibits independent control of the left and right ear
10 protection devices. Thus, placement of the encasement structure is limited to either the middle of the "forwardly extending peak" or the middle of the back of the headgear, i.e., somewhere that is an equal distance between the user's ears. The Nakano design further requires that the
15 user utilize both earplug devices at the same time, or else one end of the cord would remain dangling, which defeats the objective of the cord stowage device. The limitation of placement of the encasement structure prevents the user from attaching the device to any article of clothing such
20 as a shirt collar or pocket that may require unequal lengths of cord in order to reach each ear. Additionally, Nakano teaches away from an earplug device wherein the user only wishes to block noise on one side. For example, if a user wishes to use a cell phone in a noisy environment, the
25 user may wish to only use the ear protection device in one ear while keeping the plug for the other ear stored in the

stowage device. The device of Nakano cannot accomplish this. Thus, even the broadest reading of Nakano would require that the ear protection devices be used in conjunction with headgear that includes a crown and forwardly extending peak. Furthermore, Nakano only discusses an ear protection device where both earplug devices must extend from the stowage compartment at equal lengths and at the same time. The present invention is an improvement over Nakano because it does not need to be placed on headgear, does not need to be placed in a location equidistant from both ears, and the left and right ear protection devices can extend and retract independent of the other.

As shown, the combination of Urawa and Nakano does not disclose every element of the invention as claimed. As such, the Examiner's rejection of claims 1-5, 7-9, 11-13, 15-20, 22-25, 27, 29-32, 34, 35, 37 and 40 under 35 U.S.C. §103(a) should be withdrawn.

Further, the Examiner rejected claims 6, 10, 21, 33 and 36 under 35 U.S.C. §103(a) as being unpatentable over Urawa in view of Nakano and in further view of Rozon. As stated above, the combination of Urawa and Nakano fails to teach every element of the invention as claimed. The additional combination of Rozon also fails to teach the

element of ear protection devices that operate independently of one another.

Rozon is directed toward a cord retraction device specifically adapted for use with window blinds. Applicant
5 respectfully submits that there is no motivation for the combination of Urawa in view Nakano and in further view of Rozon as relates to the present invention. The invention of Rozon teaches the reversible taking up of slack in cord, specifically for a pair of free-ended cords found in
10 Venetian blinds or a cord loop found in a vertical blind. In fact, Rozon acknowledges that many retraction devices already exist, but none that are effectively adapted to the requirements of window blind cord retraction devices.

The design of Rozon, which pertains to window blinds,
15 is in a distinctly different field from the inventions of Urawa and Nakano, and does not provide a suggestion for one of ordinary skill in the art to the combine the references to arrive at the instant invention. Further, the combination of Urawa, Nakano and Rozon fails to teach each
20 and every element of the invention as claimed. Therefore, the rejection of claims claims 6, 10, 21, 33 and 36 under 35 U.S.C. §103(a) should be withdrawn.

The Examiner also rejected claims 14 and 38 under 35 U.S.C. §103(a) as being unpatentable over Urawa in view of

Nakano and in further view of Burger. As stated above, the combination of Urawa and Nakano do not teach every element of the invention as claimed. Specifically, Urawa fails to teach ear protection devices that are independent of one
5 another. The Examiner cites Burger for teaching a clip-on means that is rotatable. As such, the additional combination of Burger with Urawa and Nakano fails to teach every element of the invention as claimed. Therefore the rejection of claims 14 and 38 under 35 U.S.C. §103(a)
10 should be withdrawn.

The Examiner also rejected claims 39 and 41-43 under 35 U.S.C. §103(a) as being unpatentable over Urawa in view of Nakano and in further view of Yang. Applicant has cancelled claims 39 through 43. Therefore, the rejection
15 is moot and should be withdrawn.

V. ADDITIONAL AMENDMENTS

Independent claims 1 and 24 have been amended to show that the ear protection devices are independent from one
20 another in the interest of more specifically defining the invention. The amendments have been made to further distinguish the present invention from the system disclosed by Urawa.

Importantly, these claims teach the ear protection system of all other pending claims (as amended), with additional limitations, and therefore, are in condition for allowance for the same reasons as discussed above.

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CONCLUSION

In light of the foregoing amendments and remarks, Applicant submits that the specification, drawings, and all pending claims are now in condition for allowance. Early
5 and favorable action is accordingly solicited. Should the Examiner determine that an additional telephone interview would benefit the prosecution of this application, attorneys for the applicant may be contacted at the telephone number below.

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Respectfully submitted,

Date: _____

5/18/04



John W. Olivo, Jr.
Reg. No. 35,634
Ward & Olivo
382 Springfield Ave.
Summit, NJ 07901
908-277-3333

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